THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.19489 OF 2006

DATED: 20TH SEPTEMBER, 2006.

Between :

1. Kannam Mallikharjuna Rao and another .. Petitioners

And

1. M/s. Andhra Bank, Rep. By its Chief Manager,
   Authorised Officer, Zonal Office, Eluru, W.G. District
   And 3 others. .. Respondents

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ORDER :

This writ petition is filed seeking a declaration that the action of the respondents 1 and 2 in issuing the notice dated 10-8-2006 under Section 13 (4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the Securitisation Act, 2002') as arbitrary and illegal.

The petitioners are brothers. The 3rd respondent is their father and the 4th respondent is their mother. It is stated that the grandfather of the petitioners acquired various properties which were all his self-acquired. He died on 20-5-1978 leaving behind the respondent No.3 as well as the petitioners herein and another brother by name Sarveswara Rao. Since the 3rd respondent was attempting to alienate the joint family properties, the petitioners filed a suit for partition being O.S.No.33 of 2004 on the file of the Court of the Principal Senior Civil Judge, Eluru, West Godavari District, to which all coparceners are made parties. While so, the 3rd respondent obtained loans from the 1st respondent Bank by creating mortgage over the joint family properties. Since he failed to discharge the said loans, the 1st respondent Bank having invoked the provisions of the Securitisation Act, 2002, issued the possession notice dated 10-8-2006 which was published in the local dailies on 29-8-2006.

From the affidavit filed in support of the writ petition, it is clear that the impugned notice under Section 13 (4) of the Securitisation Act, 2002 was preceded by a notice under Section 13 (2) of the Securitisation Act, 2002 which was published in the local dailies on

28-12-2003. This writ petition is filed questioning the possession notice under Section 13 (4) of the Securitisation Act on the ground that while the suit for partition is pending before the Civil Court, the 1st respondent Bank ought not to have proceeded against the joint family properties by invoking the provisions of the Securitisation Act, 2002. It is also contended that the respondents 1 and 2 in collusion with the respondents 3 and 4 are taking steps to sell away the properties in question though the respondents 3 and 4 are not holding any rights over the said lands since the same are admittedly joint family properties.

At the outset, it is to be noted that under Section 17 of the Securitisation Act, 2002 any person aggrieved by any of the measures referred to in sub-section (4) of Section 13 of the Securitisation Act, 2002 taken by the secured creditor make an application to the Debts Recovery Tribunal, having jurisdiction in the matter. It is not the case of the petitioners that the 1st respondent Bank is not competent to issue the impugned notice nor there was any allegation that the impugned notice was in violation of the provisions of the Act or the Rules made thereunder.

In the circumstances, particularly keeping in view that the mater involves several disputed questions of fact, the petitioners ought to have availed the efficacious alternative remedy available under Section 17 of the Securitisation Act, 2002 for redressal of their grievance. Without exhausting the said remedy, the petitioners cannot maintain this writ petition under Article 226 of the Constitution of India.

Accordingly, the Writ Petition is dismissed. However, the petitioners are granted liberty to work out the remedy available under the Act. No order as to costs.

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G.ROHINI, J.

Dt. 20-9-2006

Gbs